

89-9530

No. _____

Supreme Court, U.S.
FILED

DEC 18 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

MARSHALL P. SAFIR,

Petitioner,

—v.—

The PRUDENTIAL INSURANCE COMPANY OF AMERICA,
UNITED STATES LINES, INC., Debtor, and
S.S. AMERICAN LANCER, S.S. AMERICAN AQUARIUS, S.S.
AMERICAN APOLLO, S.S. AMERICAN LYNX and
S.S. AMERICAN ASTRONAUT, their engines, tackle, apparel,
furnishings, equipment and appurtenances, in rem,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

MARSHALL P. SAFIR
271 Grand Central Parkway
Floral Park, New York 11005
(718) 225-0210

December 16, 1989

49 p 13



Question Presented

Whether the discretion of the Court of Appeals under Rule 38 of the Federal Rules of Appellate Procedure extends to continual injunctive control of right to its access where appellant has submitted evidence of compliance with previous sanction and evidence of financial ability to satisfy a judgment were the need to arise to assess sanctions in the future.

TABLE OF CONTENTS

	PAGE
Question Presented	i
Table of Authorities	iii
Opinions Below	2
Jurisdiction	2
Statement of the Case	2
Reasons for Granting the Writ	6
Conclusion.....	10

TABLE OF AUTHORITIES

Cases:	PAGE
<i>Archawski v. Hanioti</i> , 350 U.S. 532 (1955)	9
<i>Becker v. Adam Drug Co.</i> , 819 F.2d 32 (2nd Cir. 1987), cert. denied, 1085 S.Ct. 719.....	7
<i>In Re Ferguson v. MBank, Houston, N.A.</i> , 808 F.2d 358 (1986)	8
<i>In Re Green</i> , 669 F.2d 779 (8th Cir. 1981)	7
<i>In Re Martin-Trigona</i> , 737 F.2d 1254 (2nd Cir. 1984); 795 F.2d 9 (2nd Cir. 1986).....	4, 7, 8
<i>In Re Marshall P. Safir</i> , 108 S.Ct. 496 (1987)	2, 4
<i>In Re Marshall P. Safir</i> , 108 S.Ct. 788 (1988)	2, 4
<i>Johl v. Johl</i> , 788 F.2d 75 (2nd Cir. 1986).....	7
<i>Lypiak v. C.I.R.</i> , 816 F.2d 311 (7th Cir. 1988)	7
<i>Prudential Insurance Co. of America v. SS American Lancer et al.</i> , 870 F.2d 867 (2nd Cir. 1989)	3, 9
<i>Safir v. Interstate Commerce Comm.</i> , 831 F.2d 283 (2nd Cir. 1987), cert. denied, 109 S.Ct. 111 rehearing denied, 109 S.Ct. 520 (1988)	2, 4
<i>Safir v. Klutznick</i> , 526 F.Supp. 921 (DDC 1981).....	2, 3
<i>Safir v. U.S. Lines et al.</i> , 616 F.Supp. 613 (EDNY 1985)	5
<i>Safir v. U.S. Lines et al.</i> , 792 F.2d 19 (2nd Cir. 1986), cert. denied, 479 U.S. 1099 (1987)	5, 9
<i>Schiff v. Simon & Schuster</i> , 766 F.2d 61 (2nd Cir. 1985)	7
<i>Urban v. United Nations</i> , 768 F.2d 1497 (DC Cir. 1985)	7

Federal Rule of Appellate Procedure

Rule 38*passim*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

No. _____

MARSHALL P. SAFIR,

Petitioner,

—v.—

The PRUDENTIAL INSURANCE COMPANY OF AMERICA,
UNITED STATES LINES, INC., Debtor, and
S.S. AMERICAN LANCER, S.S. AMERICAN AQUARIUS, S.S.
AMERICAN APOLLO, S.S. AMERICAN LYNX and
S.S. AMERICAN ASTRONAUT, their engines, tackle, apparel,
furnishings, equipment and appurtenances, in rem,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Opinions Below

The Order of the Court of Appeals of September 20, 1989 denying leave to appeal (A 1, 2). The Order of the District Court S.D.N.Y. of July 14, 1989 (A 3, 4). Other relevant opinions include *Safir v. U.S. Lines et al.*, 792 F.2d 19 (2nd Cir. 1986) *cert. denied*, 479 U.S. 1099 (1987); *Safir v. United States Lines et al.*, 616 F.Supp. 613 (EDNY 1985); *Safir v. Dole*, 718 F.2d 475 (D.C. Cir. 1983) *cert. denied*, 467 U.S. 1206 (1984) *rehearing denied*, 467 U.S. 1268 (1984); *Safir v. Klutznick*, 526 F.Supp. 921 (D.D.C. 1981). *In Re Marshall P. Safir*, 108 S.Ct. 496 (1987); *In Re Marshall P. Safir*, 108 S.Ct. 788 (1988). *Safir v. ICC & CSX Corp.*, 831 F.2d 283 (2nd Cir. 1987) *cert. denied*, 109 S.Ct. 520 (1988).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment below was entered on September 20, 1989.

Rule 38

Federal Rules of Appellate Procedure

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Statement of the Case

The petitioner Marshall P. Safir had since August 12, 1987 been enjoined from filing any papers in any matter in the U.S. Court of Appeals for the Second Circuit until he furnished satisfactory evidence of payment of a \$5,000 damage judgment to CSX Corporation. *Safir v. Interstate Commerce Commission and CSX Corp.*, 831 F.2d 283 (2d Cir. 1987), *cert. denied*, 109 S.Ct. 111, *rehearing denied*, 109 S.Ct. 520 (1988). The petition for certiorari had been filed *in forma pauperis* and shortly after its denial the Second Circuit entered the Order of March 24, 1988 (A 5, 6).

The March 24, 1988 injunction decrees in pertinent part:

“Accordingly, it is hereby ORDERED that Marshall P. Safir, his agents, employees, and attorneys are enjoined from filing in the United States Court of Appeals for the Second Circuit any appeal, motion, petition, or request for relief of any sort concerning in any way United States Lines, Inc., CSX Corporation, Sea-Land Corporation, or any person, company, or entity engaged in the transportation of goods by sea, without having obtained leave of this Court for such filing. This Order shall be filed forthwith, and the injunction shall be effective from the date of filing of this Order.”

By this action the court expanded the restriction on access to the appellate court from the requirement of showing adequate proof that its prior sanctions had been complied with, to control by injunction against the right to appeal.

Under the terms of a district court injunction as modified by the Second Circuit in *Safir v. U.S. Lines et al.*, 792 F.2d 19, 35 (2d Cir. 1986), *cert. denied*, 479 U.S. 1099 (1987), new meritorious claims arising out of the same circumstances which resulted in the judgment as to liability of *Safir v. Klutznick*, 526 F. Supp. 921 (DDC 1981) were not precluded from adjudication.

One of those claims was that of a maritime lien in Admiralty. U.S. Lines had filed for protection under Chapter XI in 1986 and certain U.S. Lines “Lancer” class ships which had been sold *in rem* were still the subject of litigation between the holders of mortgages on them as to entitlement to the proceeds of the sales. By the autumn of 1988 that litigation had kept the Admiralty proceeding alive and the proceeds of the sales remained *in custodia legis*. General Electric Capital Corp., the second mortgagee had appealed to the Second Circuit (Docket No. 88-7589) a district court grant of summary judgment in favor of Prudential Insurance Co. of America wherein the District Court had held the Prudential first preferred ship mortgage valid. See *Prudential Ins. Co. of America v. American Lancer*, 870 F.2d 867 (2d Cir. 1989).

Petitioner's indigent status—his inability to pay the \$5,000 sanction ordered under Rule 38 Fed. R. App. Proc. in August 12, 1987 precluded the filing of motion for intervention with the Court to inform the panel of the existence of a maritime lien which primed both mortgages under the Ship Mortgage Act, 46 U.S.C. § 953, and which, if valid, would render the issues on appeal nugatory. In connection with the Lancer litigation, petitioner had been financially reduced to the necessity of petitioning for both mandamus and certiorari in this Court *in forma pauperis*. *In Re Marshall Safir*, 108 S.Ct. 4, 476 (1987), 108 S.Ct. 788 (1988) and *Safir v. ICC*, *supra*.

On November 17, 1988 under circumstances reminiscent of the long count in *Dempsey-Tunney*, the petitioner found himself in adventitious receipt of a check from the Trustee of Sapphire Steamship Lines, countersigned by U.S. Bankruptcy Judge Cornelius Blackshear (BCSDNY) for the partial return of equity twenty-one years after the destruction of his business by U.S. Lines and others. The check was in the amount of \$680,239.95.00 (A 7).

On December 9, 1988 petitioner was able to pay the Rule 38 award to CSX (A 8, 9). On December 16, 1988 after filing evidence of payment to the Clerk of the Court of Appeals, petitioner moved for leave to intervene in Docket 88-7589. The affidavit in support of intervention (A 10-A 15) included as Attachments 1 and 2 thereto a copy of Safir's check to CSX and a copy of the trustees' check to Safir. The motion for intervention was denied but the affidavit and Judge Blackshear's countersignature on the check was ample notice that petitioner should no longer be stigmatized as a member of that small group of litigants, bankrupt, indigent and unaccountable whose frivolous papers paralyze the court and where curtailment of access, absent the effectiveness of a damages judgment, is the only method available to defend the court's ability to carry out its constitutional functions. *In Re Martin-Trigona*, 795 F.2d 9 (2d Cir. 1986).

Such was not to be. The payment of the sanction and the other evidence of petitioner's financial accountability have been

ignored to this day. This treatment had its own precedent in the litigation: when the petitioner had been granted modification in *Safir v. U.S. Lines et al.*, 792 F.2d 19, 25 (1986) of the District Court's draconian District Court injunction in *Safir v. U.S. Lines et al.*, 616 F.Supp. 613 E.D.N.Y. 1985 the mandated modification was never recorded by the district court.

Amendment of the injunction for leave to permit the filing of a new meritorious claim was only granted on Petitioner's Rule 60(b) Motion on April 25, 1989. Petitioner then moved for intervention in the above entitled action in the Admiralty Court on June 2, 1989. The motion was denied on grounds of laches. The petitioner was held to have been sleeping on his rights (A 3).

In accordance with the March 24, 1988 Order the motion for leave to appeal and for injunction pending appeal was filed on July 25, 1989 and a Notice of Appeal under 28 U.S.C. § 1292(a)(3) with fee paid, timely filed with the Admiralty Court in Docket 87-5842. On September 20, 1989 the Second Circuit denied the motion (A 1).

On October 5, 1989 petitioner applied to this Court under Rule 44.4 for injunctive relief pending the filing of this petition. By letter dated October 10, 1989 the Clerk of this Court returned the application stating that the Order of September 20 denying the motion was not a denial of leave to appeal (A 16).

Petitioner then moved for clarification on November 9, 1989 in the Court below as to whether the denial was for leave to appeal or the denial of injunctive relief alone or for both (A 17-A 19). The Court below has not acted to clarify the order as of the date of this petition and time under Rule 12 of the Supreme Court rules may be determined to have tolled as of December 18, 1989. The Docket Sheet entry in 2d Circuit Docket 89-8076 reveals that the Order of September 20 denied both leave to appeal and injunction (A 23).

Since October 10, 1989 the Court of Appeals has further exercised its powers under the March 24 Order of Injunction by taking action on November 16, 1989 to dismiss *Safir v. U.S.*

Lines et al. in its Docket No. 89-7549 (A 24, 25) which was the companion to *Safir v. U.S. Lines et al.* Docket 89-7547 which was then before *this* Court on a Petition for Certiorari, Supreme Court Docket No. 89-652.

The grounds for dismissal was violation of the injunction by failure to request leave to file the appeal. The facts are that the appeals in both 89-7547 and 89-7549 were noticed in the District Court and the fees paid there in accordance with the rules on June 2, 1989. (A 26). Five days later the Court of Appeals issued Civil Appeals Scheduling Order (A 27, 28) without regard to the injunction and before a motion, if such was any longer necessary, could be drawn up by the petitioner.

After an Order of July 19, 1989 by the Court (A 29) extended the time for filing briefs granted on petitioners' motion for the reasons set forth in Petition for Certiorari 89-652 (pp. 2, 3) the Court then calendered the duly briefed appeal for hearing on December 1, 1989 (A 30). An order dated November 14, 1989 adjourned the oral argument (A 31) and the order of dismissal followed two days later (A 24, 25).

On November 22, 1989 the 2d Circuit denied a motion for reconsideration of its Order of June 29, 1989 dismissing *Safir v. U.S. Lines et al.*, Docket 89-7547 which dismissal was the subject of the Petition for Certiorari in this Court's Docket 89-652.

Reasons for Granting the Writ

The dismissals of both appeals in *Safir v. U.S. Lines et al.* Docket 89-7549 and the dismissal of Marshall Safir as Claimant-Intervenor in *Prudential Insurance Co. of America v. SS American Lancer et al.* when taken together have raised serious questions as to the expansion of authority of the Court of Appeals under Rule 38 of the Federal Rules of Appellate Procedure to include control by injunction not only of those litigants indigent or bankrupt to whom monetary sanctions imposed are futile, but to financially accountable litigants who are fully prepared to accept responsibility for the soundness or unsoundness of their arguments on appeal.

It is well settled that a court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court in cases where sanctions have been imposed in that court in the past and have not been paid. *Becker v. Adam Drug Co.*, 819 F.2d 32 (2d Cir. 1987), *cert. denied*, 108 S.Ct. 719; *Lysiak v. C.I.R.*, 816 F.2d 311, 313 (7th Cir. 1988); *In Re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984); 795 F.2d 9 (2d Cir. 1986); *Johl v. Johl*, 788 F.2d 75 (2d Cir. 1986); *Urban v. United Nations*, 768 F.2d 1497 (DC Cir. 1985); *In Re Green*, 669 F.2d 779, 785 (8th Cir. 1981); *Schiff v. Simon & Shushter*, 766 F.2d 61 (2d Cir. 1985).

It is clear that the effectiveness of the sanction under Rule 38 against frivolous and vexatious abuse of the processes of the court is based on compliance with the sanction before being permitted to pursue new matters.

In no recorded decision, however, has an appellate court held that regardless of whether the appellant has complied with past sanction, and regardless of the fresh evidentiary proof of financial responsibility to satisfy any judgment for costs, attorney's fees and damages, now and in the foreseeable future, that access to the Court of Appeals for review of district court error can be barred indefinitely.

This has occurred in these three cases. In the Petition for Certiorari in *Safir v. U.S. Lines*, Docket 89-652 the petitioner on October 25, 1989 stated (p. 7):

"The inconsistency of the Court's willingness to accept the \$5,000 sanction payment in the review of the denial of intervention in the Bankruptcy Court while refusing to accept the existence of that payment to review the denial of the Safir contract claims on their merits is as mystifying as it is unfair."

The mystery has been solved by the dismissal of the appeal of the denial of Bankruptcy Court intervention (Docket 89-7549) on November 16, 1989 after full briefing and a date for oral argument already set.

The grounds were non-compliance with the injunctive Order of March 24, 1988, the only basis of which was the accepted Rule 38 interpretation on sanctions—that a litigant against whom Rule 38 sanctions had been imposed must comply with the sanctions before being permitted to pursue new matters in the Court. The Order of March 24, 1988 lost its foundation when two circumstances were made known to the Court—that sanction had been paid and the injunctive relief was no longer appropriate since other sanctions if necessary would be effective against the litigant whose financial state had been shown to be dramatically improved.

This is in contrast to *In Re Martin-Trigona*, 737 F.2d at 1262, “Injunctive relief was fully appropriate, since other sanctions would *not* be effective. Assessment of costs and legal fee against this appellant might be fruitless in light of the bankruptcy proceedings . . .” The Fifth Circuit would, in contrast with the above, leave open the possibility of exception to the proof of payment requirement even in a proper case *in forma pauperis*. *Ferguson v. MBank, Houston, N.A.*, 808 F.2d 358 (1986).

The Order of Dismissal of November 16, 1989 in *Safir v. U.S. Lines et al.* (A 24, 25) taken in such peremptory fashion on such belated technicality was a graphic escalation of the dangerous possibilities inherent in the expansion of the scope of Rule 38. Moreover, if a court can ignore evidence of payment of prior sanction in its possession to bootstrap injunctive control of future access to its forum by a litigant with an unremedied injury then the abuse has risen to a constitutional level.

Notwithstanding the fact that the federal procedural question raised here can be addressed without going into the merits of the appeals that were dismissed, a short summation of the substance of the causes of action will explain why the petitioner on this legal issue of the power under Rule 38 finds it necessary to act pro se in the Petition.

When petitioner received his recovery from the Estate of Sapphire Steamship Lines in November 1988 he immediately sought to engage highly respected maritime counsel to represent

him on a motion to intervene in *Prudential v. SS American Lancer et al.* then on the General Electric appeal in the Second Circuit. Petitioner, at initial meeting with the senior partner of the law firm of his choice set forth the priming nature of his maritime claim over that of the Prudential mortgage in that his claim against U.S. Lines for disgorgement of wage subsidies paid during the period of subsidy contract violation was known to Prudential through counsel before the mortgage as amended was endorsed and recorded on May 27, 1986. Under the Ship Mortgage Act 46 U.S.C. § 953(a)(1) the Safir lien claim thus primed that mortgage.

Petitioner pointed out to counsel that the date of recordation and endorsement was occasioned by the fact that on the same day, May 27, 1986 the decision in *Safir v. U.S. Lines et al.*, 792 F.2d 19 (2d Cir. 1986) was handed down denying an implied statutory remedy to Safir and affirming the district court injunction in modified form. On that date U.S. Lines was represented by Haight, Gardner, Poor & Havens. See *Safir v. U.S. Lines* (1986) supra p. 20. Haight, Gardner also represented Prudential by an agreement dated March 6, 1986 to provide legal services in connection with the debt restructuring of U.S. Lines. Also representing Prudential at the time were Gilmartin, Poster and Shafto and Dewey Ballantine Bushby Palmer and Wood.

These law firms apparently made two mistakes on May 26, 1986. The first was to overlook the fact that the Second Circuit in *Safir v. U.S. Lines Inc.*, supra, p. 25 (1986) did not foreclose a meritorious maritime lien claim by Safir as third party beneficiary of the subsidy contract between U.S. Lines and the Maritime Administration for unjust enrichment in admiralty. *Archawski v. Hanioti*, 350 U.S. 532 (1955). The second mistake was to record and endorse the thus primed mortgage as \$92,000 instead of \$92,000,000.

The senior partner of the admiralty law firm chosen by the petitioner accepted a \$5,000 retainer with a considerable degree of enthusiasm. Two days later (December 9, 1988) at a meeting petitioner attended at the law office with several partners of the firm they informed petitioner that they would not go forward

with the case. The retainer was refunded (A 32). Petitioner was forced by time constraints to proceed on his own and at considerable disadvantage.

On September 22, 1989—an application for extension of time #211 was granted in *Safir v. U.S. Lines et al.*, this Court's Docket 89-652. The extension brought to the attention of new counsel to Prudential that the pro se layman was aware that the uncorrected error regarding the sanction payment which caused the dismissal of Appellate Docket 89-7547 would be to moot Docket 89-7549 and that both dockets would soon result in petitions for certiorari. Prudential waited no longer to file suit against Haight, Gardner, Gilmartin and Dewey Ballantine in New York Supreme Court Index No. 20968 for negligence and breach of contract with damages claimed as of that date of \$31,000,000.

Conclusion

The petition for certiorari should be granted. The expansion of the reach of Rule 38 of the Federal Rules of Appellate Procedure should not extend to the power to ignore compliance with its own sanctions in order to justify an appellate injunction against direct access to the Court for the purpose of appeal. In this case injunctive control of a litigant was maintained for a year after the usual and proper safeguards against vexatious, repetitive and malicious abuse of process by irresponsible indigents and others who cannot be held accountable, were no longer warranted.

This petitioner has legitimate unremedied claims and for his conduct he can be held strictly accountable under Rule 38. He should not, however, be punitively denied access to the Court because his claims, by the passage of time and through no desire of his own, have escalated to jeopardize not only his former steamship competitors and their ship mortgagees but the financial health of respected white shoe bastions of the legal profes-

sion itself. Equal justice in this case points up the need for some guidelines to appellate discretion under the Rule.

Respectfully submitted,

MARSHALL SAFIR
271 Grand Central Parkway
Floral Park, New York 11005
(718) 225-0210

December 16, 1989

APPENDIX



UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 89-8076

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

—v—

S.S. AMERICAN LANCER

MARSHALL P. SAFIR as complainant intervenor

appellant

NOTICE OF MOTION FOR LEAVE TO APPEAL AND FOR
STAY OR INJUNCTION PENDING APPEAL

MOTION BY:

Marshall P. Safir
271 Grand Central Parkway
Floral Park, NY 11005
(718) 225-0210

OPPOSING COUNSEL:

Milbank, Tweed, Hadley
& McCloy
Gilmartin, Poster & Shafto
Weil, Gotshal & Manges

Has consent of opposing counsel:

A. been sought?

☐ Yes ☒ No

B. been obtained

☐ Yes ☒ No

Has service been effected?

☒ Yes ☐ No

Is oral argument desired?

☒ Yes ☐ No

Requested return date:

Has argument date of appeal been set:

A. by scheduling order?

☐ Yes ☐ No

B. by firm date of argument notice?

☐ Yes ☐ No

EMERGENCY MOTIONS, MOTIONS FOR
STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below: ☐ Yes ☒ No

Would expedited appeal eliminate need
for this motion? ☐ Yes ☒ No

If No, explain why not:

Insufficient time

Will the parties agree to maintain the sta-
tus quo until the motion is heard? ☐ Yes ☒ No

Judge or agency whose order is being appealed:
SDNY Judge Richard Owen 87CV5842

Brief statement of the relief requested:
Injunction Pending Appeal

Appellant or Petitioner:

☒ Plaintiff ☐ Defendant

By:
MARSHALL P. SAFIR

Appearing for:
Pro se

Appellee or Respondent:

☐ Plaintiff ☐ Defendant

Marshall P. Safir

Date
July 17, 1989

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is
denied.

A TRUE COPY
ELAINE B. GOLDSMITH
Clerk

ELLSWORTH A. VAN GRAAFEILAND
Ellsworth A. Van Graafeiland, USCJ
THOMAS J. MESKILL
Thomas J. Meskill, USCJ

9/20/89 AMALYA L. KEARSE
Amalya L. Kearse, USCJ

EXHIBIT A
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF N.Y.
PRO SE OFFICE

Notice of Motion to Intervene—as Plaintiff

87 Civ. 5842 (R0)

Docket # 236

FILED: U.S. DISTRICT COURT
JUNE 02 1989

THE PRUDENTIAL INSURANCE CO. OF AMERICA,

Plaintiff,

—against—

SS AMERICAN LANCER, SS AMERICAN AQUARIUS, SS
AMERICAN APOLLO, SS AMERICAN LYNX, SS
AMERICAN ASTRONAUT, their engines, tackle,
apparel, furnishings, equipment and appurtenances, in rem,
Defendants.

PLEASE TAKE NOTICE on the 9th of June 1989 at 9:30 AM or a soon thereafter as counsel can be heard, that Marshall P. Safir will move this Court for leave to intervene to Rule 24(b) of the Federal Rules of Civil Procedure in order to assert claims against the vessel proceeds now held *in custodia legis*. He recites the following as the grounds why he should be permitted to intervene; he has a *priming maritime lien against the proceeds of the above defendant vessels in rem and his interest is such* that disposition of this action may impair or impede that interest which appears more fully in the attached affidavit and veri-

fied complaint and which may be competing with the interests of other plaintiffs.

Yours,

/s/ MARSHALL P. SAFIR
Marshall P. Safir
271 Grand Central Pky.
Floral Park, New York 11005
(718) 225-0210

Date: June 2, 1989

MICROFILM

JUL 20 1989 12:00 PM

[HANDWRITTEN SIDENOTE]: Leave to intervene is denied as per minutes 7/14/89. So ordered. [ILLEGIBLE SIGNATURE]

STAMP OF: U.S. DISTRICT COURT, S.D.N.Y. JUL 20 1989

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24th day of March one thousand nine hundred and eighty-eight.

Present: HONORABLE JON O. NEWMAN,
HONORABLE AMALYA L. KEARSE,
HONORABLE ROGER J. MINER,
Circuit Judges.

FILED: MARCH 24 1989

87-3007

87-4037

IN RE: MARSHALL P. SAFIR,

Petitioner.

MARSHALL P. SAFIR,

Plaintiff-Appellant,

—v.—

INTERSTATE COMMERCE COMMISSION, ET AL.,

Defendants-Appellees.

O R D E R

This Court's Order of August 12, 1987, as amended by Order of September 21, 1987, required Marshall P. Safir to show cause within thirty days why he should not be enjoined from fil-

ing further papers in this Court concerning parties and topics therein set forth, without having obtained leave of this Court for such filing. Though this Court's Order of August 12, 1987, was not stayed, Safir elected to postpone his response to the show cause order until the United States Supreme Court on January 25, 1988, denied his motion for rehearing of the Supreme Court's prior denial of his petition for a writ of mandamus. Safir filed his response to the show cause order on February 18, 1988, accompanying it with a request, purportedly pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, for an order vacating our Order of August 12, 1987. Though Safir's response to the show cause order may well be untimely, we have considered it on its merits and conclude that it provides no basis for withholding an appellate injunction, in view of Safir's history of pursuing vexatious litigation.

Accordingly, it is hereby ORDERED that Marshall P. Safir, his agents, employees, and attorneys are enjoined from filing in the United States Court of Appeals for the Second Circuit any appeal, motion, petition, or request for relief of any sort concerning in any way United States Lines, Inc., CSX Corporation, Sea-Land Corporation, or any person, company, or entity engaged in the transportation of goods by sea, without having obtained leave of this Court for such filing. This Order shall be filed forthwith, and the injunction shall be effective from the date of filing of this Order.

It is further ORDERED that Safir's request to vacate this Court's Order of August 12, 1987, is denied.

HONORABLE JON O. NEWMAN

Honorable Jon O. Newman

HONORABLE AMALYA L. KEARSE

Honorable Amalya L. Kearse

HONORABLE ROGER J. MINER

Honorable Roger J. Miner

Circuit Judges.

CHEMICAL BANK

20 Pine Street
New York, N.Y. 10008

VOID IF NOT CASHED
WITHIN SIXTY DAYS

No.

November 7, 19 88 1-12/210

\$ 680,239.95

PAY TO THE ORDER OF MARSHAL, SAPPHIRE

Six Hundred Eighty Thousand Two Hundred Thirty Nine and 95/100----- DOLLARS

ESTATE OF SAPPHIRE STEAMSHIP LINES, INC. BANKRUPT J. READ SMITH, TRUSTEE
IN PAYMENT OF Equity Interest Holders

J. Read Smith
J. READ SMITH
TRUSTEE
Charles Blackman
Charles Blackman

BANKRUPTCY JUDGE

COUNTERSIGNED

⑆ 021000128⑆ 0010019589⑆

ACKNOWLEDGEMENT OF RECEIPT

This will acknowledge receipt of a certified check from Marshall Safir for the amount of \$5,000.00 payable to CSX Corp. in connection with the matter entitled Safir v. Interstate Commerce Commission and CSX Corp., Docket No. 87-4037, Second Circuit Court of Appeals.

SIDLEY & AUSTIN

/s/ MAURA FECHER
Maura Fecher
520 Madison Avenue
New York, New York 10022
(212) 418-2100

Attorneys for CSX Corp.

<p>CLAS S SAFIR</p>		<p>Dec 9 1988 1253</p>
<p>1-12/280</p>		<p>\$ 5000.00</p>
<p>Pay to the order of <u>Corp</u></p>		<p>5000.00</p>
<p>Five thousand dollars and 00/100</p>		<p>DOLLARS</p>
<p>CHENICAL BANK 2778 Central Parkway New York, NY 10005</p>		<p>GLADY SAFIR</p>
<p>DO NOT REMOVE THIS LABEL CERTIFIED CHECK</p>		<p>11010280001218</p>

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket # 88-7589

MOTION TO INTERVENE under RULE 29.

THE PRUDENTIAL INSURANCE CO. OF AMERICA,

Plaintiff-Appellee,

—against—

SS AMERICAN LANCER, AMERICAN AQUARIUS, SS AMERICAN APOLLO, SS AMERICAN LYNX, SS AMERICAN ASTRO-NAUT, their engines, tackle, apparel, furnishings, equipment and appurtenances, in rem,

Defendants.

MOTION TO INTERVENE FOR LEAVE TO FILE A
BRIEF AMICUS CURIAE

AFFIDAVIT OF MARSHALL P. SAFIR IN SUPPORT OF HIS
MOTION FOR LEAVE TO INTERVENE FOR THE PURPOSE OF
FILING A BRIEF AMICUS CURIAE

MARSHALL P. SAFIR, being duly sworn deposes and says:

1. Affiant is the holder of a claim against US Lines and the proceeds of the Lancer Vessels in rem for unjust enrichment arising out of a breach of a maritime contract wherein he was the intended third-party beneficiary.

2. By the clear language of the Ship Mortgage Act (46 USC § 953(a)(1)(b)(1), the claim represents a priming preferred maritime lien of such proportion as to eliminate any recovery by either Prudential Insurance Co. of America, the 1st preferred ship mortgage holder or General Electric Capital Corp. the sec-

ond mortgage holder, of the proceeds of the Lancer sales now in custodia legis.

3. Moreover the claim represents such total interest in those proceeds as to render nugatory the agreement of Prudential with the appellee-claimant US Lines, debtor and debtor in possession.

4. The history of the *Safir* litigation began in the Second Circuit Court of Appeals with the decisions in *Safir v Gibson*, 417 F2d 972 (1969) and *Safir v Gibson*, 430 F2d 137, 145 (1970) cert. denied 400 US 850, 942 (1970), which established that this affiant was the intended beneficiary of the § 810 clause in the maritime operating differential subsidy contract of U.S. lines and other American Flagship lines which incorporated the wording of Section 810 of the Merchant Marine Act of 1936 in each and every such contract. This Court held that an enforceable cause of action for a remedy would lie for the victim of the breach.

5. On November 6, 1981, the District Court for the District of Columbia (Bryant, C.J.) held that Section 810, MMA '36 had been violated by all the subsidized members of an American ship conference (which included US Lines) and that these violators were liable for the recovery of the officers and seamen's wage subsidies illegally paid during the period of violation. *Safir v Klutznick*, 526 F.Supp. 921 (DDC 1981) The amount of these payments to US Lines was certified by the Maritime Administration to be \$26,844,437.62. When interest is added since February 28, 1966 therein the unjust enrichment is now in excess of \$150,000,000.00.

6. The judgment in "*Klutznick*" was modified by the decision in *Safir v Dole*, 718 F2d 475 (DC Cir 1983) cert. denied 104 S.Ct. 2389 rehearing denied 104 S.Ct. 3563 (1984) which reduced the amount of subsidy recovery for the government's account below the amount recommended by the District Court by upholding the finding of the Secretary of Commerce in 1974 on which a lower government settlement was based.

7. The government's settlement of the breach for its own account, which was publicly announced three years before the earliest Prudential mortgage was placed on the Lancers in 1978, was mitigated because of the Secretary's finding of complicity of government officials in the conspiracy against the affiant. This was a clear concession that as between the promisee Maritime Administration and Safir the third-party beneficiary, Safir as claimant since 1967, had a better right to the balance of the shipwage differentials. The fact that the Secretary of Commerce's duty under the Merchant Marine Statute, Section 810 (46 U.S.C. § 1227) might not encompass the government's handing its share over to a private claimant (cf. *Safir v Dole*, supra) was irrelevant to Safir's quasi-contract claim and U.S. Lines obligation to him as cestui qui trust for disgorgement under the operating differential subsidy contract.

8. Affiant's constructive trust claim to the Lancer proceeds is a *priming maritime lien* not only because it arose out of his status as the intended third-party beneficiary of the maritime subsidy contract but because under SMA 46 USC § 953(a)(1) the lien arose long before the disputed recording and endorsement of the \$92,885,000.00 first preferred ship mortgage which is the subject matter of the instant appeal.

9. From the time of the "Klutznick" judgment as to liability in 1981 and the "Dole" modification in 1983, US Lines and Prudential knew that the constructive trust related back to the wrong which caused its creation and that Safir had a cause of action which ran from the judgment flowing from the conduct.

10. The search for a remedy for the priming maritime lien which spanned the period of mortgage recasting of the Lancer fleet in 1983 as amended in 1986 by Amendment 1 was well known to all including General Electric Capital. It is manifest that the mortgagees could not have been prejudiced because they were aware of their jeopardy from the start US Lines' obligation to them under SMA § 924 call for criminal penalties for non-disclosure.

11. The parties to this appeal also knew there was no bona fide dispute as to the amount of the Safir lien because in this

claim the money sought was not for consequential damages for the contract breach but for the easily calculable unjust enrichment which was the breach itself.

12. The Lancers were acquired and operated by US Lines with the ill gotten gains of that eleven month contract violation. The proceeds of the Lancer sales in rem under the jurisdiction of the Admiralty Court sufficiently trace the res to satisfy the priming nature of the constructive trust and affiant's entitlement to the Lancer proceeds.

13. Affiant is aware of the requirement under Rule 29 of the Federal Rules of Appellate Procedure to show the reason for the late filing of this request for leave to file an amicus brief after the brief of the party whose position as to affirmation or reversal he supports. In this case it can be seen that his support of the position of the appellant General Electric Capital for reversal is based on none of the arguments therein contained but on the equitable need of reversal and remand on the facts based on this affidavit and the short preliminary memorandum of law attached hereto. The delay in the ability to file this motion and its excusability requires a much more detailed explanation which follows.

14. Affiant has since August 12, 1987 been enjoined from filing any papers in any matter in this Court until he furnished satisfactory evidence of payment of a \$5,000.00 damage judgment to CSX Corp. in related actions *Safir v Inter-State Commerce Commission, CSX Corp. and Sea Land Service Corp.*, Dockets 87-4037 and 87-3007.

15. From August 12, 1987 until December 9, 1988 affiant was financially unable to pay the award to CSX and indeed had been forced to petition for both mandamus and certiorari to the Supreme Court therefrom in forma pauperis. On December 9, 1988 affiant was able to pay the award-a copy of the acknowledgement of receipt by CSX is attached hereto (A-1).

16. The ability to pay was occasioned by the adventitious receipt of a check from the Trustee of Sapphire Steamship Lines countersigned by Bankruptcy Judge Cornelius Blackshear

on November 17, 1988 for a partial return of equity twenty-one years after the destruction of the business by US Lines and the others. See ATT. A-2.

17. The injunctive effect of the inability to gain access to this Court in the ensuing 16 months has had harmful consequences which only this Court can reverse.

18. This Court in *Safir v US Lines et al*, 792 F2d 19, 25 (2nd Cir 1986) cert. denied 107 S.Ct. 1323 (1987) modified a District Court injunction against any filing by the affiant of federal court actions for relief arising out of the violation of Section 810 MMA '36 so as not to foreclose a meritorious remedy other than on false claims or implied statutory right of action theories.

19. On October 14, 1987 affiant moved the District Court for leave to file such quasi-contract remedy for breach of contract as a third-party beneficiary against US Lines and the other defendants. This was set forth as Court II of a complaint which included a conspiracy cause of action under 42 USC §1985(3).

20. The District Court (Nickerson, J.) denied an Order to Show Cause for leave to file—the Clerk filed the Complaint nevertheless (see ATT 3, Docket sheet) and the affiant appealed only to have his notice of appeal and for a Writ of Mandamus papers rejected by the Clerk of this Court under the August 12th Order.

21. Delay in the ability to appeal was harmful because affiant had, on September 30, 1987, received Notice of Bar Date from United States Lines, Debtor in Possession as ordered by the Bankruptcy Court requiring the filing of proof of claim—a maritime lien claim under 46 USC § 953 or an equitable interest claim under 11 USC § 541(d)—before November 25, 1987. See ATT 4. Notice to Safir, Marshall P. creditor #35515 and Notice of Meeting pursuant to Sec. 341(a).

22. Moreover such filing was necessary to be timely under the six-year statute of limitations for action to enforce a constructive trust in New York under CPLR Section 213(2).

23. Furthermore, the existing District Court injunction although modified in *Safir v US Lines et al*, supra (1986) was still in effect to preclude protection of the claim in either Bankruptcy or Admiralty Court jurisdictions on the specific sales of the 8 Lancers whose proceeds fortuitously remain undistributed as a result of this appeal by General Electric.

24. Affiant requests intervention to protect his tracing claim now where he could not appear in the Admiralty Court below. US Lines as appellee-claimant under Rule C(6) of the Supplemental Rules for Certain Admiralty Claims should not be eligible, at his expense, to support the case for Prudential for a share of the proceeds of the vessels to which, by US Lines own unconscionable conduct, it ought not to have been able to hold title in the first place.

25. For the reasons set forth, affiant prays that his motion to intervene for the purpose of filing a brief as amicus curiae be granted with the understanding that he will, because he now has the means to, engage recognized admiralty counsel for its immediate preparation.

Dated: December 16, 1988

Respectfully submitted,

/s/ MARSHALL P. SAFIR

Marshall P. Safir
271 Grand Central Parkway
Floral Park, New York 11005
(718) 225-0210

UNITED STATES SUPREME COURT

OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
October 10, 1989

Marshall P. Safir
271 Grand Central Parkway
Floral Park, New York 11005

RE: *Marshall P. Safir v. S.S. American Lancer, et al.*

Dear Mr. Safir:

The application for an injunction pending the filing of a petition for writ of certiorari in the above-entitled case was received October 5, 1989 and is herewith returned. Although you indicate that the U.S. Court of Appeals for the Second Circuit denied you leave to appeal, you have not attached a copy of such order.

Very truly yours,
JOSEPH F. SPANIOL, JR.

by /s/ CHRISTOPHER W. VASIL
Christopher W. Vasil
Deputy Clerk

Enclosures

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 89-8076

 PRUDENTIAL INSURANCE

—v—

AMERICAN LANCER ET AL.

MARSHALL P. SAFIR (COMPLAINANT INTERVENOR)

Appellant

 NOTICE OF MOTION FOR CLARIFICATION

MOTION BY:

Marshall P. Safir Pro Se
 271 Grand Central Parkway
 Floral Park, NY 11005
 (718) 225-0210

OPPOSING COUNSEL:

Weil Gotshal & Manges
 Milbank Tweed Hadley
 & McCloy
 Gilmartin, Poster & Shafto
 See Certificate of Service
 for telephones &
 addresses

Has consent of opposing counsel:

A. been sought?

☐ Yes ☒ No

B. been obtained

☐ Yes ☒ No

Has service been effected?

☒ Yes ☐ No

Is oral argument desired?

☐ Yes ☒ No*(Substantive motions only)*

Requested return date:

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order?

☐ Yes ☐ No

B. by firm date of argument notice?

☐ Yes ☐ No

C. If Yes, enter date: _____

EMERGENCY MOTIONS, MOTIONS FOR
STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? ☐ Yes ☐ No
(See *F.R.A.P. Rule 8*)

Would expedited appeal eliminate need
for this motion? ☐ Yes ☐ No

If No, explain why not:

Will the parties agree to maintain the sta-
tus quo until the motion is heard? ☐ Yes ☐ No

Judge or agency whose order is being appealed:

HON. RICHARD OWEN SDNY

Brief statement of the relief requested:

CLARIFICATION OF EXTENT OF ORDER OF SEPTEMBER 20,
1989

Complete Page 2 of This Form

By:
MARSHALL P. SAFIR

Appearing for:
Pro se

Appellant or Petitioner:
☒ Plaintiff ☐ Defendant
Appellee or Respondent:
☐ Plaintiff ☐ Defendant

Marshall P. Safir

Date
Nov. 9, 1989

____ ORDER ____

IT IS HEREBY ORDERED that the motion be and it hereby
is granted denied.

Previous requests for similar relief and disposition:

NONE

Statement of the issue(s) presented by this motion:

WHETHER DENIAL OF INJUNCTION WAS ALSO A DENIAL OF
LEAVE TO APPEAL

Brief statement of the facts (*with page references to the moving papers*):

SUPREME COURT DOES NOT CONSIDER THE ORDER FINAL
FOR PURPOSE OF ITS ASSUMPTION OF JURISDICTION

Summary of the argument (*with page references to the moving papers*):

CLARIFICATION IS NEEDED TO PROTECT MOVANTS RIGHTS
UNDER 28 USC § 1254(1)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Case No. 89-8076

JUDGE BELOW: OWEN . . . 0862

Official Caption¹

Docket No.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Plaintiff-

—v—

S.S. AMERICAN LANCER, S.S. AMERICAN AQUARIUS,
S.S. AMERICAN APOLLO, S.S. AMERICAN LYNX
and S.S. AMERICAN ASTRONAUT, their engines,
tackle, apparel, furnishings, equipment and appurtenances,
in rem,

Defendants-

MARSHALL P. SAFIR, as Complainant Intervenor,

Movant.

Authorized Abbreviated Caption²

Docket No.

PRUDENTIAL INS CO V SS AMER LANCER

1 Fed. R. App. P. 12(a) and 32(a).

2 For use on correspondence and motions ONLY.

Movant: Marshall P. Safir
271 Grand Central Parkway
Floral Park, New York, 11005
(718) 225-0210
(PRO SE)

RESPONDENTS: Poppy B. Quattlebaum, Esq.,
Managing Attorney
MILBANK TWEED HADLEY
and MCCLOY
One Chase Manhattan Plaza
NYC, NY, 10005
(212) 530-5124
(for:

Michael C. Lambert, Esq.,
GILMARTIN POSTER SHAFTO
One William Street
NYC, NY, 10004
(212) 425-3220
(for UNITED STATES LINES)

Corinne Ball, Esq.,
WEIL GOTSHAL MANGES
767 Fifth Ave.,
NYC, NY, 10153
(212) 310-8268
(for PRUDENTIAL INS CO
OF AMERICA)

and

MCCUTCHEN BLACK
VERLEGER SHEA
600 Wilshire Blvd.,
Los Angeles
California, 90017
()
(for PRUDENTIAL INS CO
OF AMERICA)

**NEW AIMS
GENERAL DOCKET**

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

DATE	(89-8076)	FILINGS—PROCEEDINGS	(89-8076)
7-17-89	Movant MARSHALL P. SAFIR motion for leave to appeal and for stay or injunction pending appeal, FILED. (PRO SE).		
7-26-89	Movant SAFIR motion for leave to appeal and injunction pending appeal, FILED. (PRO SE).		
8-1-89	Movant SAFIR supplemental affidavit in support of leave to appeal and injunction pending appeal, FILED. (PRO SE).		
8-14-89	Respondent THE PRUDENTIAL INSURANCE CO OF AMERICA Affidavit in Opposition to the movants application for leave to apepal etc, FILED.(orig to pro se law clerks).		
8-14-89	Respondent PRUDENTIAL INSURANCE etc MEMO OF LAW IN RESPONSE to movants application for leave to appeal etc, <i>RECEIVED</i> . (requires leave of the court to file, oversized).(orig to pro se law clerks.)		
8-15-89	Respondent PRUDENTIAL INSURANCE CO memo of law in response to movants application for leave to appeal etc, FILED.(new submission within page limits).		
8-16-89	Respondent claimant US LINES INC memo in opposition to movants application for leave to appeal, etc., FILED. (3cc Pro Se Office).		
8-16-89	Movant SAFIR reply to opposition of Prudential Ins Co., FILED. (3cc Pro Se Office).		

- 9-20-89 ORDER DENYING movants motion for leave to appeal and stay pending appeal, FILED. (By: EAVG, TJM, ALK).
- 9-21-89 Certified copy of the order filed 9-20-89 issued to the district court, S.D.N.Y..
- 11-09-89 Movant SAFIR Motion for Clarification of extent of order entered 09-20-89, Filed. (w/pfs)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

EDNY

85-CIV-864

NICKERSON (0724)

89-7549

Nov. 16, 1989

FILED: UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

NOV 16 1989

ELAINE B. GOLDSMITH, CLERK

SAFIR

v.

UNITED STATES LINES, INC., ET AL.

In an order of this Court under 87-3007, *In Re: Marshall P. Safir* and 87-4037, *Marshall P. Safir v. Interstate Commerce Commission*, dated March 24, 1988, it was "ORDERED that Marshall P. Safir, his agents, employees, and attorneys are enjoined from filing in the United States Court of Appeals for the Second Circuit any appeal, motion, petition, or request for relief of any sort concerning in any way United States Lines, Inc., CSX Corporation, Sea-Land Corporation, or any person, company, or entity engaged in the transportation of goods by sea, without having obtained leave of this Court for such filing."

Marshall P. Safir, having failed to obtain leave of this Court to file the instant appeal,

IT IS HEREBY ORDERED that the above captioned appeal be
and hereby is dismissed.

FOR THE COURT

A TRUE COPY

ELAINE B. GOLDSMITH

/s/ ELAINE B. GOLDSMITH

Clerk

/s/ ELAINE B. GOLDSMITH

Elaine B. Goldsmith
Clerk

CERTIFIED: NOV. 17, 1989

AO82 SWEDA
(3/87)ORIGINAL
RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

110276

Billy N

Account Code

100	Deposit Fund
200	Registry Fund Treasury
250	Registry Fund Local
310	Immigration / Naturalization Fees
320	Attorney Admission Fee
330	Filing Fees
340	Sale of Publications
350	Copy Fees
360	Miscellaneous Fees
370	Interest Deposits to U.S.
380	Court Costs to U.S.
386	Restitution to U.S.
391	Contributions to U.S.
392	Misc. Gifts to U.S.
400	Crime Victims Fund
X600	Unclaimed Money
900	Appropriation Repayments

000333P

000334P

110276#H

NOTICE OF APPEL

20 5.00

330 10.00

85CV0864#H

DOCK FEE ON APP

20 100.00

330 200.00

#H

TOTAL 210.00

CHECK 210.00

123#H

CHANGE 0.00

4 ITM-CT


CASE REFERENCE:

85cv 864, 2

RECEIVED FROM

Marshall Sifer271 E.C.P. NY NY 11005

06/02/89 REGN01 024845A001 14:29

is: Appeal (12) onSifer X US Lines Inc.DEPUTY CLERK 

Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Filed June 7, 1989

Docket No. 89-7549

SAFIR v UNITED STATES LINES

CIVIL APPEALS SCHEDULING ORDER # ONE
MAKE ALL TELEPHONE INQUIRIES TO
(212) 791-9189/0105

Noting that Marshall P. Safir, appellant pro se, has filed a Notice of Appeal, and being advised as to the progress of the appeal,

IT IS HEREBY ORDERED that the district court shall be responsible for filing the record on appeal on or before June 20, 1989.

IT IS FURTHER ORDERED that appellant's brief and appendix be filed on or before July 20, 1989. If appellant's brief does not exceed 10 pages, it may be filed in memorandum form.

IT IS FURTHER ORDERED that the appellee's brief be filed on or before August 21, 1989. If the appellee's brief does not exceed 10 pages, it may be filed in memorandum form.

IT IS FURTHER ORDERED that 10 copies of each brief or memorandum shall be filed with the Clerk; however, the filing of a lesser number may be permitted upon application.

IT IS FURTHER ORDERED that the appellee may, without further order of the court, file 10 copies of an appendix to its brief, or 10 copies of an attachment to its memorandum.

IT IS FURTHER ORDERED that the argument of the appeal shall be heard as early as the week of Sept. 11, 1989. The appellant pro se and opposing counsel and parties should immediately advise the Clerk by letter of the dates thereafter that they are unavailable for oral argument. The time and place of oral argument shall be separately noticed by the Clerk to the appellant, pro se, and all counsel.

IT IS FURTHER ORDERED that in the event of default by appellant in timely filing the appellant's brief or memorandum and appendix, or upon default by appellant regarding any other provision of this order, the appeal may be dismissed forthwith without further notice and without a motion therefor.

IT IS FURTHER ORDERED that if the appellee fails to file a brief or memorandum within the time directed by this order, the appellee shall be subject to such sanctions as the court may deem appropriate.

ELAINE B. GOLDSMITH
Clerk

/s/ RAMBERTO RODRIGUEZ
Ramberto Rodriguez,
Deputy Clerk

Date: June 7, 1989

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 89-7549

Filed July 19, 1989

SAFIR v. U.S. LINES

ORDER

Brief statement of the relief requested:

Extension of time to file brief.

IT IS HEREBY ORDERED that the motion for extension of time is granted only to the extent that the record on appeal shall be filed on or before appellant's brief and joint appendix shall be filed on or before August 21, 1989, the appellee's brief shall be filed on or before September 21, 1989 and the appeal shall be ready to be heard as early as the week of October 9, 1989.

ELAINE B. GOLDSMITH, *Clerk*

19 July 1989
Date

By: /s/ MARCIA C. MOHAN
Supervisory Staff Attorney

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK 10007

IMPORTANT

PLEASE RETURN IMMEDIATELY

ELAINE B. GOLDSMITH
Clerk

FIRM NOTICE

Date of Hearing: Fri. Dec. 1, 1989	Calendar No. 306
	Docket No. 89-7549
Re: Marshall P. Safir	Calendar Call: 10:00AM

v. United States Lines, Inc., Lykes Bros. Steamship Co.,
Inc., American President Lines, LTD., Farrell Lines, Inc.,
American Export Lines, Inc., Prudential Lines, Inc.,
Prudential-Grace Lines, Inc. & Moore McCormack Lines

() This appeal will be taken on submission

(xx) Oral argument time has been allotted as follows:

Safir: 5 minutes, others to share 5 minutes

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED: UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
ELAINE B. GOLDSMITH, CLERK
NOV 14, 1989

Marshall P. Safir,
Plaintiff-Appellant,

—v—

United States Lines, Inc., Lykes Bros. Steamship Co., Inc.,
American President Lines, LTD., Farrell Lines, Inc., Amer-
ican Export Lines, Inc., Prudential Lines, Inc., Prudential-
Grace Lines, Inc., Moore McCormack Lines,

Defendants-Appellees.

IT IS HEREBY ORDERED that oral argument in the above enti-
tled appeal be and it hereby is adjourned.

FOR THE COURT:

/s/ LUCILLE CARR
By: Lucille Carr,
Deputy Clerk

Dated: November 14, 1989
New York, New York

HEALY & BAILLIE
SPECIAL ACCOUNT
 27 BROADWAY NEW YORK, NY 10008

4862

1108/218

Dec. 9, 1988

PAY TO THE ORDER OF Marshall P. Safir

1 \$ 5,000.00

five thousand and 00/100

DOLLARS



140 BROADWAY OFFICE
MARINE MIDLAND BANK, N.A.
 NEW YORK, NEW YORK 10015

FOR refund of retainer re: Maritime Claims
 78542-002

AG Shaw

004862 1:021001088: 0017648818*

